

Social Security Administration

§ 404.405

based on the average indexed monthly earnings equal to one-twelfth of the contribution and benefit base determined for that year. Thereafter, the total monthly benefits payable to persons on the earnings record of those insured individuals will then be increased only when monthly benefits are increased because of cost-of-living adjustments (see § 404.270ff).

(2) If benefits are payable on the earnings of more than one individual and the primary insurance amount of one of the insured individuals was computed under the provisions in effect before 1979 and the primary insurance amount of the other was computed under the provisions in effect after 1978, the maximum monthly benefits cannot be more than the amount computed under paragraph (f)(1) of this section.

(g) *Person previously entitled to disability insurance benefits.* If an insured individual who was previously entitled to disability insurance benefits becomes entitled to a “second entitlement” as defined in § 404.250, or dies, after 1995, and the insured individual’s primary insurance amount is determined under §§ 404.251(a)(1), 404.251(b)(1), or 404.252(b), the monthly maximum during the second entitlement is determined under the following rules:

(1) If the primary insurance amount is determined under §§ 404.251(a)(1) or 404.251(b)(1), the monthly maximum equals the maximum in the last month of the insured individual’s earlier entitlement to disability benefits, increased by any cost-of-living or ad hoc increases since then.

(2) If the primary insurance amount is determined under § 404.252(b), the monthly maximum equals the maximum in the last month of the insured individual’s earlier entitlement to disability benefits.

(3) Notwithstanding paragraphs (g)(1) and (g)(2) of this section, if the second entitlement is due to the insured individual’s retirement or death, and the monthly maximum in the last month of the insured individual’s earlier entitlement to disability benefits was computed under paragraph (d–1) of this section, the monthly maximum is equal to the maximum that would have been de-

termined for the last month of such earlier entitlement if computed without regard for paragraph (d–1) of this section.

[45 FR 1611, Jan. 8, 1980, as amended at 46 FR 25601, May 8, 1981; 48 FR 46148, Oct. 11, 1983; 51 FR 12606, Apr. 14, 1986; 58 FR 64892, Dec. 10, 1993; 62 FR 38450, July 18, 1997; 64 FR 17101, Apr. 8, 1999; 64 FR 57775, Oct. 27, 1999; 65 FR 16813, Mar. 30, 2000]

§ 404.404 How reduction for maximum affects insured individual and other persons entitled on his earnings record.

If a reduction of monthly benefits is required under the provisions of § 404.403, the monthly benefit amount of each of the persons entitled to a monthly benefits on the same earnings record (with the exception of the individual entitled to old-age or disability insurance benefits) is proportionately reduced so that the total benefits that can be paid in 1 month (including an amount equal to the primary insurance amount of the old-age or disability insurance beneficiary, when applicable) does not exceed the maximum family benefit (except as provided in § 404.405 where various savings clause provisions are described).

§ 404.405 Situations where total benefits can exceed maximum because of “savings clause.”

The following provisions are *savings clauses* and describe exceptions to the rules concerning the maximum amount payable on an individual’s earnings record in a month as described in § 404.403. The effect of a *savings clause* is to avoid lowering benefit amounts or to guarantee minimum increases to certain persons entitled on the earnings record of the insured individual when a statutory change has been made that would otherwise disadvantage them. The reduction described in § 404.403 does not apply in the following instances:

(a)–(m) [Reserved]

(n) *Months after August 1972.* The reduction described in § 404.403(a) shall not apply to benefits for months after August 1972 where two or more persons were entitled to benefits for August 1972 based upon the filing of an application in August 1972 or earlier and the

total of such benefits was subject to reduction for the maximum under § 404.403 (or would have been subject to such reduction except for this paragraph) for January 1971. In such a case, maximum family benefits on the insured individual's earnings record for any month after August 1972 may not be less than the larger of:

(1) The maximum family benefits for such month determined under the applicable table in section 215(a) of the Act (the *applicable* table in section 215(a) is that table which is effective for the month the benefit is payable or in the case of a lump-sum payment, the month the individual died); or

(2) The total obtained by multiplying each benefit for August 1972 after reduction for the maximum but before deduction or reduction for age, by 120 percent and raising each such increased amount, if it is not a multiple of 10 cents, to the next higher multiple of 10 cents.

(o) *Months after December 1972.* The reduction described in § 404.403 shall not apply to benefits for months after December 1972 in the following cases:

(1) In the case of a redetermination of widow's or widower's benefits, the reduction described in § 404.403 shall not apply if:

(i) Two or more persons were entitled to benefits for December 1972 on the earnings records of a deceased individual and at least one such person is entitled to benefits as the deceased individual's widow or widower for December 1972 and for January 1973; and

(ii) The total of benefits to which all persons are entitled for January 1973 is reduced (or would be reduced if deductions were not applicable) for the maximum under § 404.403.

In such case, the benefit of each person referred to in paragraph (o)(1)(i) of this section for months after December 1972 shall be no less than the amount it would have been if the widow's or widower's benefit had not been redetermined under the Social Security Amendments of 1972.

(2) In the case of entitlement to child's benefits based upon disability which began between ages 18 and 22 the reduction described in § 404.403 shall not apply if:

(i) One or more persons were entitled to benefits on the insured individual's earnings record for December 1972 based upon an application filed in that month or earlier; and

(ii) One or more persons not included in paragraph (o)(2)(i) of this section are entitled to child's benefits on that earnings record for January 1973 based upon disability which began in the period from ages 18 to 22; and

(iii) The total benefits to which all persons are entitled on that record for January 1973 is reduced (or would be reduced if deductions were not applicable) for the maximum under § 404.403.

In such case, the benefit of each person referred to in paragraph (o)(2)(i) of this section for months after December 1972 shall be no less than the amount it would have been if the person entitled to child's benefits based upon disability in the period from ages 18 to 22 were not so entitled.

(3) In the case of entitlement of certain surviving divorced mothers, the reduction described in § 404.403 shall not apply if:

(i) One or more persons were entitled to benefits on the insured individual's earnings record for December 1972 based upon an application filed in December 1972 or earlier; and

(ii) One or more persons not included in paragraph (o)(3)(i) of this section are entitled to benefits on that earnings record as a surviving divorced mother for a month after December 1972; and

(iii) The total of benefits to which all persons are entitled on that record for any month after December 1972 is reduced (or would be reduced if deductions were not applicable) for the maximum under § 404.403.

In such case, the benefit of each such person referred to in paragraph (o)(3)(i) of this section for months after December 1972 in which any person referred to in paragraph (o)(3)(ii) of this section is entitled shall be no less than it would have been if the person(s) referred to in paragraph (o)(3)(ii) of this section had not become entitled to benefits.

(p) *Months after December 1973.* The reduction described in § 404.403 shall not apply to benefits for months after December 1973 where two or more persons were entitled to monthly benefits for

Social Security Administration

§ 404.406

January 1971 or earlier based upon applications filed in January 1971 or earlier, and the total of such benefits was subject to reduction for the maximum under § 404.403 for January 1971 or earlier. In such a case, maximum family benefits payable on the insured individual's earnings record for any month after January 1971 may not be less than the larger of:

(1) The maximum family benefit for such month shown in the applicable table in section 215(a) of the Act (the *applicable* table in section 215(a) of the Act is that table which is effective for the month the benefit is payable or in the case of a lump-sum payment, the month the individual died); or

(2) The largest amount which has been determined payable for any month for persons entitled to benefits on the insured individual's earnings records; or

(3) In the case of persons entitled to benefits on the insured individual's earnings record for the month immediately preceding the month of a general benefit or cost-of-living increase after September 1972, an amount equal to the sum of the benefit amount for each person (excluding any part of an old-age insurance benefit increased because of delayed retirement under the provisions of § 404.305(a) for the month immediately before the month of increase in the primary insurance amount (after reduction for the family maximum but before deductions or reductions for age) multiplied by the percentage of increase. Any such increased amount, if it is not a multiple of \$0.10, will be raised to the next higher multiple of \$0.10 for months before June 1982 and reduced to the next lower multiple of \$0.10 for months after May 1982.

(q) *Months after May 1978.* The family maximum for months after May 1978 is figured for all beneficiaries just as it would have been if none of them had gotten a benefit increase because of the retirement credit if:

(1) One or more persons were entitled (without the reduction required by § 404.406) to monthly benefits for May 1978 on the wages and self-employment income of a deceased wage earner;

(2) The benefit for June 1978 of at least one of those persons is increased by reason of a delayed retirement cred-

it (see § 404.330(b)(4) or § 404.333(b)(4)); and

(3) The total amount of monthly benefits to which all those persons are entitled is reduced because of the maximum or would be so reduced except for certain restrictions (see § 404.403 and § 404.402(a)).

[32 FR 19159, Dec. 20, 1967, as amended at 40 FR 30814, July 23, 1975; 43 FR 8132, Feb. 28, 1978; 43 FR 29277, July 7, 1978; 48 FR 46148, Oct. 11, 1983]

§ 404.406 Reduction for maximum because of retroactive effect of application for monthly benefits.

Under the provisions described in § 404.403, beginning with the month in which a person files an application and becomes entitled to benefits on an insured individual's earnings record, the benefit rate of other persons entitled on the same earnings record (aside from the individual on whose earnings record entitlement is based) are adjusted downward, if necessary, so that the maximum benefits payable on one earnings record will not be exceeded. An application may also be effective (retroactively) for benefits for months before the month of filing (see § 404.603). For any month before the month of filing, however, benefits that have been previously certified by the Administration for payment to other persons (on the same earnings record) are not changed. Rather, the benefit payment of the person filing the application in the later month is reduced for each month of the retroactive period to the extent that may be necessary, so that no earlier payment to some other person is made erroneous. This means that for each month of the retroactive period the amount payable to the person filing the later application is the difference, if any, between (a) the total amount of benefits actually certified for payment to other persons for that month, and (b) the maximum amount of benefits payable for that month to all persons, including the person filing later.

[32 FR 19159, Dec. 20, 1967, as amended at 64 FR 14608, Mar. 26, 1999]